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Federal Communications Commission
Office of the Secretary

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: <u>Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593</u>

Dear Ms. Dortch:

Together with Verizon's Curtis L. Groves, Maggie McCready, Fred Moacdieh, and Ed Shakin, I met Monday with Nick Alexander, Pamela Arluk, Ben Childers, Ken Lynch, Elizabeth McIntyre, Eric Ralph, Jonathan Reel, Steve Rosenberg, Deena Shetler, Daniel Shiman, and Jamie Susskind of the Wireline Competition Bureau; and Jack Erb of the Office of Strategic Planning and Policy Analysis, to discuss the generally available and individually negotiated special access discounts that Verizon offers and also the regulatory framework that the Commission should use as it continues to analyze the issues in this proceeding.

We discussed that in order to provide customers more choices, Verizon offers many different voluntary special access discount plans that provide substantial benefits to a wide range of special access purchasers. Verizon offers discounts to customers that commit to purchase special access from Verizon for a specified time period, which do not depend upon how many special access circuits customers purchase, and we also offer discount plans that include volume commitments. In our March Ex Parte, we described how these plans give customers the ability to choose from a variety of discount plans that best fit their business needs.[1]

Verizon's generally available term-only discount plans and the term-and-volume discount plans offer comparable discounts. We presented a chart (see Attachment A) that demonstrates that the term-only plans and the term-and-volume plans offer comparable discounts, generally up to 52 percent off tariffed rates.

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[1] *See* Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (March 27, 2012) ("March Ex Parte").

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We discussed the charges that apply when a customer terminates a term plan early, before its commitment expires. We explained that these termination liability charges are not punitive, and that they generally put the customer in the same position it would have been in had that customer initially enrolled in a term plan that covered the time period for which the customer actually purchased the service. For example, we explained that if a customer signed up for a five-year term-only plan but terminated after three years, after Verizon applied tariffed termination liability charges, the customer generally would be no worse off than it would have been had it originally signed up for a three-year term-only plan.

We also discussed the charges that apply when a customer signs up for a term-and-volume discount plan and does not meet its volume commitment. We explained that these shortfall charges result in the customer paying only what it would have paid had it not been for the shortfall.

In addition, we discussed that individually-negotiated contracts are available in Verizon's pricing flexibility areas. As the chart explains, these individually-negotiated contracts, which are tariffed, provide substantial discounts based on term length and volume or revenue commitment. Each contract is open to all customers that meet the specific contract's terms and conditions. These contracts can offer discounts of up to 30 percent over and above the discounts under Verizon's generally available discount plans.

We also explained that when a term-and-volume discount plan expires, customers seeking that want to migrate some of their circuits to a competitive provider have options under which they can still receive a significant discount on the circuits it continues to purchase from Verizon. For example, the customer can move the affected circuits into a month-to-month plan, until it completes the migration to a new provider, while simultaneously placing the circuits that will remain with Verizon into a new term-only plan. Additionally, the customer is free to convert that new term-only plan for the remaining circuits into a new term-and-volume plan at any point. If the customer chooses to convert, the customer may be eligible for a time-in-service credit under the new term-and-volume plan, depending upon the previous plan and how long the circuits were in service under the term-only plan.

With respect to the analytical framework that the Commission should use as it analyzes the level of competition in this proceeding, we explained that the marketplace for high-capacity services is changing rapidly. Robust wireless broadband usage has increased the demand for high-capacity services, and as a result the marketplace is undergoing a fundamental shift away from TDM-based DS1 and DS3 special access services as customers look to newer technologies that a variety of new and existing competitors offer. As a result, we explained, Verizon's demand for DS1 special access services declined **BEGIN CONFIDENTIAL**

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Because the marketplace is shifting so dramatically, it is imperative that the Commission focus on the availability of competitive alternatives, which includes not only where competitors are offering new services today, but also where they plan to offer service in the future, instead of relying on backwards looking market share data. Backwards-looking market share data would be both stale and meaningless in this environment, and those data should not serve as the basis for assessing a prospective regulatory regime. As the Department of Justice has said, "In any industry subject to significant technological change, it is important that the evaluation of competition be forward-looking... Insight can best be gained by looking at product life cycles [and] the replacement of older technologies by newer ones."[2]

Furthermore, as demand shifts to new technologies and competitors, prices that customers have paid for special access services have declined over time. The costs of the network components to provide special access services, meanwhile, have increased. Nevertheless, the Commission should not conduct a review of service-specific costs. Because special access services use network components that are shared with other services, like local exchange and switched access, any attempt to measure service-specific special access costs would entail arbitrary allocation of the incumbent carriers' networks' significant joint and common costs, which would produce virtually meaningless results. Instead, the Commission could compare cost indices like the AUS Telephone Plant Index (TPI) to the prices that customers pay for special access. That comparison would demonstrate that the prices that customers pay for special access services are lagging the costs of the network components used to provide special access services, as well as inflation.[3]

Verizon seeks confidential treatment of the specific demand data supplied above under the *Modified Protective Order*.[4] Notwithstanding the *Modified Protective Order*, this information is entitled to confidential, non-public treatment under the Freedom of Information Act (FOIA) and related provisions of the Commission's rules. *See* 47 C.F.R. §§ 0.457 and 0.459; 5 U.S.C. § 552, *et seq.* This data constitutes sensitive commercial information related to special access services between Verizon and other providers. The Commission has consistently held that similar data satisfy the requirements of FOIA Exemption 4 (trade secrets or commercial/financial information). *See, e.g., Cox Communications, Inc.*; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12160, ¶ 6 (2004) ("*Cox*"); *see also Comcast Cable*

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[2] Ex Parte Submission of the United States Department of Justice, *Economic Issues in Broadband Competition; A National Broadband Plan for Our Future*, GN Docket No. 09-51, at 6 (Jan. 4, 2010).

[3] *See* Comments of Verizon and Verizon Wireless, WC Docket No. 05-25 & RM-10593, at 49-51 (Jan. 19, 2010).

[4] *Special Access for Price Cap Local Exchange Carriers*, Modified Protective Order, 25 FCC Rcd 15168 (2010) ("*Modified Protective Order*"); *see also* Letter from Sharon Gillett, Wireline Competition Bureau, to Donna Epps, Verizon, 27 FCC Rcd 1545 (2012).

Communications, Inc.; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12165, ¶ 6 (2004); *Time Warner Cable*; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12170, ¶ 5 (2004); and *Altrio Communications, Inc.*; *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12176, ¶¶4-5 (2004). In addition, Verizon treats this data as confidential. As in the *Cox* case, Verizon does not customarily release this information to the public. *Cox*, ¶ 5. Verizon also limits the internal circulation of this information to only those with a "need-to-know." *Id.*

Moreover, information in the possession of a public entity is considered to be "confidential" if disclosure is likely to substantially harm the competitive position of the person from whom the information was obtained. *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); and *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 873 (D.C. Cir. 1992). That is the case here. Verizon is subject to actual and potential competition with respect to all special access services;therefore, public disclosure of this data could harm Verizon in a number of ways. This information would, for instance, give actual and potential competitors information about the extent to which Verizon is succeeding in the marketplace that is not otherwise publicly available.

Sincerely,

Donna Epps

Attachment

Attachment A
Verizon Special Access Discount Plans

Plan Type	Description	Discount Level
Term-Only	These plans require term commitments (but no volume commitment) for each specific circuit enrolled in the plan. Depending on the provisions of the plan, each circuit may be enrolled for a different term of years. Discounts are provided on a per circuit basis and increase for longer terms. Customers can purchase a single circuit and receive a substantial discount.	Up to 52 Percent
Term-and-Volume	The discounts or benefits are based on a combined term and volume commitment. The plans require the customer to commit to a specific percent of its current Verizon purchases for a specific term in exchange for discounts and other benefits. The discounts generally increase for longer terms or greater volumes. Customers can purchase even relatively small volumes to qualify for discounts under some of these plans.	Up to 52 Percent[1]
Pricing Flexibility Contract	These tariffs are individually negotiated contracts that provide substantial discounts based on a term of years and volume or revenue commitment. The discounts are generally applied to Verizon's month-to-month tariffed rates or to the already discounted rates available under Verizon's generally available discount plans. The discounts are only available for special access purchases in Phase I ("contract") and Phase II ("uncapped") pricing flexibility areas. Each contract, which is filed publicly in a tariff, is open to all customers that can meet the terms and conditions of the specific contract. Customers can negotiate for contract to cover broad (multiple states) or more narrow geographic areas (a single metropolitan statistical area).	Up to 30 percent on top of discounts of any term or term-and-volume plans

[1] One plan in the western region of Verizon offers discounts of up to 67%. This plan accounts for a small portion of Verizon's overall special access revenue.